

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	File Number: EB-04-LA-281
Communications Relay Corporation	)	
	)	NAL/Acct. No.: 200632900007
Antenna Structure Registrant	)	FRN: 0014046999
ASR #1019247	)	
Claremont, California	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 12, 2008****Released: March 14, 2008**

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* ("Order"), we deny the Petition for Reconsideration ("*Petition*") filed on January 22, 2007, by Communications Relay Corporation ("CRC"), registrant of antenna structure #1019247, in Claremont, California. CRC seeks reconsideration of the *Forfeiture Order*,<sup>1</sup> issued by the Western Region, Enforcement Bureau ("Region"), in which CRC was found liable for a monetary forfeiture in the amount of \$13,000 for repeated violations of Section 303(q) of the Communications Act of 1934, as amended, ("the Act"),<sup>2</sup> and Sections 17.23, 17.47, 17.48, 17.49 and 17.57 of the Commission's Rules ("Rules").<sup>3</sup> For the reasons discussed below, we deny CRC's *Petition*.

**II. BACKGROUND**

2. According to the Commission's ASR database, antenna structure #1019247 is required to have painting and lighting in accordance with Chapters 3, 4, 5 and 13 of FAA Circular 70/7460-1J. Specifically, the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two steady-burning sidelights on opposite sides at the midpoint.<sup>4</sup> On December 2, 2004, agents from the Enforcement Bureau's Los Angeles Office observed that no lights were functioning on antenna structure #1019247. A review of Commission records showed KSCI, Inc., as the registrant of antenna structure #1019247. On December 3, 2004, the Los Angeles Office notified the Federal Aviation Administration's ("FAA's") Hawthorne Automated Flight Service Station ("FSS") of the light outage. On January 25, 2005, a Los Angeles agent conducted a follow-up inspection of the structure and confirmed that no lights were functioning on the structure.

3. On January 26, 2005, a Los Angeles agent contacted KSCI, Inc., and was advised that the

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<sup>1</sup> *Communications Relay Corporation*, 21 FCC Rcd 14651 (EB 2006).

<sup>2</sup> 47 U.S.C. § 303(q).

<sup>3</sup> 47 C.F.R. §§ 17.23, 17.47, 17.48, 17.49 and 17.57.

<sup>4</sup> See FAA Circular Number 70/7460-1J, Chapters 3, 4, 5, 13.

structure had been sold to CRC in September, 2004. The agent contacted a CRC service representative and advised him that the lights were not functioning on antenna structure #1019247. Later on January 26, 2005, James Kay ("Kay"), the president of CRC, advised the agent that CRC would make any repairs that would be required.

4. On January 27, 2005, Kay informed the Los Angeles Office that a relay had burned out on the lighting system on antenna structure #1019247 but that the lighting system was now operational. Subsequent to Kay's report that the lights were operational, however, the Los Angeles Office received a report that no tower lights were visible on the structure.

5. On February 10, 2005, a Los Angeles agent again contacted CRC and relayed the reports that the lights on antenna structure #1019247 were not operational and reminded CRC that lighting was required on the structure. Kay and the CRC service representative responded that CRC was purchasing all new lights to install on the structure.<sup>5</sup> On February 17, 2005, a Los Angeles agent spoke to the CRC service representative who reported that the tower light's electrical problem had been repaired, but that an alarm system for reporting light failures was not yet installed. The representative also told the agent that he was responsible for daily observations of the tower lights. On February 25, 2005, a Los Angeles agent made an observation of antenna structure #1019247 and found that the lighting on the structure was operational.

6. On May 3, 2005, a Los Angeles agent reviewed the Commission's ASR database and found it continued to show that antenna structure #1019247 was registered to KSCI, Inc. On August 25, 2005, the Los Angeles Office sent a Letter of Inquiry ("LOI") to CRC, which requested confirmation of CRC's continued ownership of antenna structure #1019247. The LOI also requested information concerning whether CRC was aware of the requirements of Sections 17.47, 17.48, 17.49 and 17.57 of the Rules; when CRC became aware of these requirements; and what efforts CRC had taken to maintain compliance with these requirements.

7. On September 14, 2005, CRC replied to the LOI. In its reply, CRC confirmed that it acquired antenna structure #1019247 in August of 2004, and that it was still the owner of the structure. CRC also acknowledged that it had not yet notified the Commission of the change in ownership of the structure. CRC stated that it had "purchased the tower with the understanding from the previous owner that it was in full compliance with all applicable regulatory requirements." CRC also stated that it was generally aware of the Commission's tower regulations. CRC acknowledged that it was not aware of the light outages on antenna structure #1019247 until notified by the Los Angeles Office in January, 2005. CRC explained the lighting problem as being caused by a power line surge, one that is a recurring problem at the site. CRC also stated that it had ordered a new beacon lighting system with automated monitoring capabilities, but provided no response regarding any other efforts to comply with Section 17.47, which requires either daily observations of the lighting system by the antenna structure owner or an automatic alarm system designed to detect and indicate any failure of the lighting system. CRC also failed to explain its efforts to comply with Section 17.48, which requires notification to the FAA of failures and repairs; or Section 17.49, which requires detailed records be kept of lighting failures, adjustments, repairs and all FAA notifications.

8. On September 26, 2005, CRC filed an application to notify the Commission of the ownership transfer of the antenna structure from KSCI, Inc., to CRC.<sup>6</sup> On September 29, 2005, CRC sent a supplemental reply to the LOI stating that a new lighting system and alarm system had been purchased and would soon be installed on antenna structure #1019247.

<sup>5</sup> The agent also contacted the FAA's Hawthorne Automated Flight Service Station and reported the outage.

<sup>6</sup> See Application No. A0467617, filed September 26, 2005. The Commission granted the application and updated the ownership information on December 30, 2005.

9. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>7</sup> Section 17.21(a) of the Rules states antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study.<sup>8</sup> According to its ASR, antenna structure #1019247 is 62.1 meters in height and is assigned painting and lighting specifications by the FAA. Section 17.23 of the Rules requires that registered antenna structures conform to the mandatory FAA painting and lighting recommendations set forth on the FAA Notice issued to the structure owner.<sup>9</sup> Section 17.47 of the Rules requires either daily observations of the lighting system by the antenna structure owner or an automatic alarm system designed to detect and indicate any failure of the lighting system.<sup>10</sup> Section 17.48 of the Rules requires notification to the FAA of failures and repairs.<sup>11</sup> Section 17.49 requires detailed records be kept of lighting failures, adjustments, repairs and all FAA notifications.<sup>12</sup> Section 17.57 of the Commission's Rules requires that the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must immediately notify the Commission upon any change in structure height or change in ownership information.<sup>13</sup>

10. On January 19, 2006, the Los Angeles Office issued a *NAL* in the amount of \$13,000 to CRC.<sup>14</sup> CRC filed a response to the *NAL* on February 21, 2006 ("*Response*"). In the *NAL*, the Los Angeles Office found that CRC apparently willfully and repeatedly violated Section 303(q) of the Act<sup>15</sup> and Sections 17.23, 17.47, 17.48, 17.49, and 17.57 of the Rules<sup>16</sup> by failing to comply with the antenna structure registration ("*ASR*") lighting, monitoring, record keeping, and notification requirements specified for antenna structure #1019247. In its *Response*, CRC argued that antenna structure #1019247 is not more than 200 feet in height, and that, therefore, no rule violations took place, that CRC's failure to immediately update the ASR for antenna structure #1019247 did not delay the Los Angeles Office in contacting CRC, that CRC fully cooperated with the Los Angeles Office in determining the reasons for the failures of the lighting on antenna structure #1019247, and that CRC has a history of compliance with the Commission's Rules.

11. In the *Forfeiture Order*, the Region painstakingly and carefully addressed each of CRC's arguments, ultimately finding no merit in any of them. Specifically, the Region noted that CRC's primary argument, that this structure did not exceed 60 meters in height, completely missed the point that the structure was assigned painting and lighting requirements by the FAA, and that the structure's lights were repeatedly not functioning. The Region reiterated that Section 17.21(a) of the Rules states that "[a]ntenna structures shall be painted and lighted when . . . [t]hey exceed 60.96 meters (200 feet) in height above the

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<sup>7</sup> Section 303(q) of the Act gives the Commission authority to regulate certain antenna structures if and when such structures constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. 47 U.S.C. § 303(q).

<sup>8</sup> 47 C.F.R. § 17.21(a). See *Max Media of Montana, LLC*, 18 FCC Rcd 21375 (2003).

<sup>9</sup> 47 C.F.R. § 17.23.

<sup>10</sup> 47 C.F.R. § 17.47.

<sup>11</sup> 47 C.F.R. § 17.48.

<sup>12</sup> 47 C.F.R. § 17.49.

<sup>13</sup> 47 C.F.R. § 17.57.

<sup>14</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900007 (Enf. Bur., Western Region, Los Angeles Office, released January 19, 2006).

<sup>15</sup> 47 U.S.C. § 303(q).

<sup>16</sup> 47 C.F.R. §§ 17.23, 17.47, 17.48, 17.49 and 17.57.

ground or they require special aeronautical study (emphasis added).”<sup>17</sup> Section 17.23 of the rules requires that “each new or altered antenna structure to be registered on or after January 1, 1996 must conform to the FAA’s painting and lighting recommendations set forth on the FAA determination of ‘no hazard’ as referenced in the . . . FAA Advisory Circulars: AC 70/7460-1J, ‘Obstruction Marking and Lighting,’ effective January 1, 1996, and AC 150/5345-43E, ‘Specification for Obstruction Lighting Equipment,’ dated October 19, 1995.”<sup>18</sup> The original registrant for antenna structure #1019247, KSCI, Inc., filed an application to register the structure on April 22, 1997. In this application, KSCI, Inc., stated that the structure had an overall height above ground level, including appurtenances, of 62.1 meters. As part of the registration application, KSCI, Inc., included the FAA’s determination of “no hazard” for the antenna structure, FAA Study Number 97-AWP-0713-OE, which was issued on March 25, 1997. As detailed on the ASR for structure #1019247, FAA Study Number 97-AWP-0713-OE requires that antenna structure #1019247 have painting and lighting in accordance with Chapters 3, 4, 5 and 13 of FAA Circular 70/7460-1J.<sup>19</sup> Specifically, the structure is required to be painted and have obstruction lighting consisting of at least one flashing red beacon on top and two steady-burning sidelights on opposite sides at the midpoint.<sup>20</sup> Consequently the Region found that CRC violated Section 17.23 by failing to ensure that antenna structure #1019247 conform to the FAA’s painting and lighting recommendations set forth on the FAA determination of “no hazard” for the structure, FAA Study Number 97-AWP-0713-OE.<sup>21</sup> The Region also warned CRC that if it believed that the ASR for antenna structure #1019247 should be modified, it must first engage in the process of pursuing such a modification.<sup>22</sup>

12. The Region then concluded that because antenna structure #1019247 is required to be painted and lighted in accordance with the relevant FAA Notice, CRC’s argument that Sections 17.23, 17.47, 17.48, 17.49 and 17.57 of the Rules do not apply to antenna structure #1019247 was moot. The Region determined that, contrary to CRC’s assertions, CRC’s compliance with these Rules was not voluntary.<sup>23</sup> The Region also found no merit in CRC’s argument that CRC’s failure to timely update the ownership information for antenna structure #1019247 did not delay the Los Angeles Office in contacting CRC about the light outage on the structure. The Region found that, in fact, CRC’s failure to update the ownership information required the Los Angeles Office to first contact the former owner of the structure in order to determine who was responsible for the structure. Even after the Los Angeles Office contacted CRC, eight months passed before CRC finally updated the ownership information for the structure, despite repeated inquiries from the Los Angeles Office.<sup>24</sup>

13. The Region also found no merit in CRC’s argument that its cooperation with the Commission during the investigation warranted a reduction or cancellation of the proposed forfeiture

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<sup>17</sup> 47 C.F.R. § 17.21(a). The Region noted that in its *Response*, CRC neglected to include the phrase “or when they require special aeronautical study” when quoting Section 17.21(a). *Response* at 3.

<sup>18</sup> 47 C.F.R. § 17.23.

<sup>19</sup> The ASR for antenna structure #1019247 also states that the structure is 62.1 meters in height.

<sup>20</sup> See FAA Circular Number 70/7460-1J, Chapters 3, 4, 5, 13.

<sup>21</sup> 21 FCC Rcd at 14655 – 14656.

<sup>22</sup> As of the date of this *Order*, no modification has been made to the ASR for antennas structure #1019247.

<sup>23</sup> The Region also stated that its was “particularly troubled by CRC’s assertion that ‘CRC was not the owner of a registered structure until it voluntarily submitted a notification of change of ownership in September of 2005, well after the alleged violations.’ CRC stated in its response to the Los Angeles Office LOI that it acquired antenna structure #1019247 in August 2004. CRC’s failure to timely update the ownership information in the ASR for antenna structure #1019247 does not shield it from liability for its violations of the Rules beginning in August 2004, when it acquired the antenna structure.” 21 FCC Rcd at 14656.

<sup>24</sup> 21 FCC Rcd at 14656.

because the Commission has stated in the past that an entity is expected to correct errors when they are brought to the entity's attention and that such correction is not grounds for a downward adjustment in a forfeiture.<sup>25</sup> Finally, the Region found that, contrary to CRC's request for a reduction based on CRC's history of compliance with the Rules, the president of CRC, James Kay, had a history of noncompliance. Specifically, in a prior proceeding, the Commission found that Kay deliberately withheld material information from the Commission, in violation of Section 1.17 of the Rules,<sup>26</sup> and issued a forfeiture of \$10,000 to Kay.<sup>27</sup> Because of Kay's previous noncompliance, the Region declined to find that CRC has a history of compliance with the Rules.<sup>28</sup>

### III. DISCUSSION

14. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>29</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>30</sup>

15. In its *Petition*, CRC raises the exact same issues previously raised in response to the NAL and detailed above, which have been thoroughly considered and rejected by the Region. CRC argues that the Region erred in rejecting these arguments but does not provide any new facts or explanations demonstrating that there was a material error in the *Forfeiture Order*.<sup>31</sup> Once again CRC bases its argument on its allegation that antenna structure #1019247 does not exceed 200 feet above ground level, and consequently, CRC's compliance with the Rules cited was voluntary. We reiterate and affirm the decision rendered by the Region: that CRC repeatedly violated Section 303(q) of the Act and the Commission's antenna structure rules. The FAA's determination of "no hazard" for antenna structure #1019247, FAA Study Number 97-AWP-0713-OE, requires that antenna structure #1019247 have painting and lighting in accordance with Chapters 3, 4, 5 and 13 of FAA Circular 70/7460-1J. Section 17.23 of the Rules requires that antenna structures conform to the FAA's painting and light requirements set forth on the structure's determination of "no hazard." Antenna structure #1019247 did not comply with those requirements at the time of investigation. CRC was the owner of antenna structure #1019247 at the time

<sup>25</sup> *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871-76 (2002).

<sup>26</sup> 47 C.F.R. § 1.17.

<sup>27</sup> *James Kay*, 17 FCC Rcd 1834 (2002) *aff'd sub nom. Kay v. Federal Communications Commission*, 396 F.3d 1184 (D.C. Cir. 2005) *cert. denied*, 126 S.Ct. 176 (2005).

<sup>28</sup> 21 FCC Rcd at 14656 – 14657.

<sup>29</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), *citing WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>30</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>31</sup> CRC acknowledges that the arguments presented are similar to those made in its *Response* to the NAL, and asserts that the "representation" of these issues is proper because the Region is subordinate to the Bureau, and "presenting the matter to the Bureau Chief is a prerequisite for Commission review" pursuant to Section 1.115(c) of the Rules, 47 C.F.R. § 1.115(c). Even in this assertion, CRC is incorrect. As stated above, a petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied. Additionally, the Commission has determined that Section 1.115(c) requires that the designated authority must pass on issues prior to the filing of an application for review, but has never required that the designated authority in all cases is the Chief of the relevant Bureau. See *In the Matter of Application of Educational Television Association of Metropolitan Cleveland, Inc.*, 18 FCC Rcd 15117 (2003) (A branch of the former Mass Media Bureau was relevant designated authority to pass on issues prior to the filing of an application for review). In the present case, the questions of fact and law raised by CRC were already considered and rejected by the appropriate authority, the Western Regional Director, in the *Forfeiture Order*.

of the investigation. Consequently, we find the Region did not err in rejecting CRC's arguments, and we affirm the Region's finding that CRC is liable for violating the antenna structure rules, as detailed above.<sup>32</sup>

16. CRC also argues that the Region erred by assigning the history of non-compliance of CRC's principal, James Kay, to CRC because Kay, as a long-time Commission licensee, has no history of non-compliance concerning antenna structure registration, marking or lighting. We disagree. The Region appropriately took into account Kay's history as a Commission licensee and regulatee generally when determining the appropriate forfeiture amount. The Commission has said in the past that the Enforcement Bureau is not limited to considering only violations of Rules concerning the same subject matter when weighing a history of compliance claim; the Bureau may also consider adjudicated findings of violations of the Act or Rules other than the current subject matter.<sup>33</sup>

17. We have considered the arguments raised by the CRC in its *Petition* and find they are without merit. Therefore, we deny the CRC's *Petition*, and affirm the Region's *Forfeiture Order* finding CRC liable for a forfeiture in the amount of \$13,000.

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>34</sup> and Section 1.106 of the Commission's Rules,<sup>35</sup> the *Petition* for Reconsideration filed on January 22, 2007, by Communications Relay Corporation, **IS DENIED**.

19. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,<sup>36</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's Rules,<sup>37</sup> Communications Relay Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$13,000 for violating Section 303(q) of the Act,<sup>38</sup> and Sections 17.23, 17.47, 17.48, 17.49 and 17.57 of the Rules.<sup>39</sup>

20. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>40</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications

<sup>32</sup> Contrary to CRC's assertion, the Region's determination is not "an absurd result" resulting in "monetary forfeitures to owners of towers that in fact are not subject to the lighting requirement." CRC states that it is in the process of modifying its registration information for antenna structure #1019247. We note that as of the date of this *Order*, no modification of the antenna structure registration for antenna structure #1019247 has taken place. Even if CRC filed for a new FAA study, there is no evidence that the FAA would not require painting and lighting on antenna structure #1019247.

<sup>33</sup> *SBC Communications, Inc.*, 16 FCC Rcd 12306, 12309 (2001).

<sup>34</sup> 47 U.S.C. § 405.

<sup>35</sup> 47 C.F.R. § 1.106.

<sup>36</sup> 47 U.S.C. § 503(b).

<sup>37</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>38</sup> 47 U.S.C. § 303(q).

<sup>39</sup> 47 C.F.R. §§ 17.23, 17.47, 17.48, 17.49 and 17.57.

<sup>40</sup> 47 U.S.C. § 504(a).

Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

21. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Communications Relay Corporation, at its address of record, and its counsel of record, Robert J. Keller, Esquire.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau